

## § 381.6

involved and the Maritime Administration, except where such department or agency determines, with the concurrence of the Maritime Administration, that (a) U.S.-flag vessels are not available at fair and reasonable rates for U.S.-flag commercial vessels, or (b) that there is a substantially valid reason for fixing foreign-flag vessels first.

[G.O. 103, Amdt. 2, 36 FR 19254, Oct. 1, 1971, as amended at 57 FR 13047, Apr. 15, 1992]

### § 381.6 Informal grievance procedure.

(a) Whenever any person has a question, problem, complaint, grievance, or controversy pertaining to the terms and conditions of any tenders, charter party terms, or other matter involving the administration of the Cargo Preference Act of 1954, such person may request the Maritime Administration to afford him an opportunity to discuss the matter informally with representatives of the Maritime Administration and, if other U.S. Government agencies or foreign missions, embassies, or agencies acting on behalf of a foreign government are involved with them or persons authorized to speak for them.

(b) In such cases, a request may be made by telephone or letter to the Chief, Office of Market Development, Maritime Administration, Washington, DC 20590, (202) 366-4610. When such a request has been received, the Maritime Administrator, Department of Transportation or his designated representative will promptly consider the matter on its merits and provide assistance if possible. If the matter cannot be resolved satisfactorily by the Maritime Administration, the Maritime Administrator, Department of Transportation or his designated representative will then arrange for a meeting at a time and place satisfactory to all interested parties so that the matter may be freely discussed and resolved.

(c) At such meetings, the Maritime Administrator, Department of Transportation or his designated representative may request any U.S. Government agency, foreign mission, embassy, or agency acting on behalf of a foreign government, or others having an interest in the matter to attend such a conference, or to send representatives authorized to speak for them. All such

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meetings and conferences will be conducted in an informal manner.

[G.O. 103, Amdt. 3, 37 FR 3641, Feb. 18, 1972, as amended at 57 FR 13047, Apr. 15, 1992]

### § 381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements.

In order to insure a fair and reasonable participation by privately owned United States-flag commercial vessels in transporting cargoes which are subject to the Cargo Preference Act of 1954 and which are generated by U.S. Government Grant, Guaranty, Loan and/or Advance of Funds Programs, the head of each affected department or agency shall require appropriate clauses to be inserted in those Grant, Guaranty, Loan and/or Advance of Funds Agreements and all third party contracts executed between the borrower/grantee and other parties, where the possibility exists for ocean transportation of items procured, contracted for or otherwise obtained by or on behalf of the grantee, borrower, or any of their contractors or subcontractors. The clauses required by this part shall provide that at least 50 percent of the freight revenue and tonnage of cargo generated by the U.S. Government Grant, Guaranty, Loan or Advance of Funds be transported on privately owned United States-flag commercial vessels. These clauses shall also require that all parties provide to the Maritime Administration the necessary shipment information as set forth in § 381.3. A copy of the appropriate clauses required by this part shall be submitted by each affected agency or department to the Secretary, Maritime Administration, for approval no later than 30 days after the effective date of this part. The following are suggested acceptable clauses with respect to the use of United States-flag vessels to be incorporated in the Grant, Guaranty, Loan and/or Advance of Funds Agreements as well as contracts and subcontracts resulting therefrom:

(a) *Agreement Clauses.* "Use of United States-flag vessels:

"(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed,

loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

“(2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.”

(b) *Contractor and Subcontractor Clauses.* “Use of United States-flag vessels: The contractor agrees—

“(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

“(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

“(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.”

(Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amend-

ed by Pub. L. 91-469 (84 Stat. 1036) and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973))

[42 FR 57126, Nov. 1, 1977]

#### § 381.8 Subsidized vessel participation.

(a) For the purpose of approving subsidized U.S.-flag liner and bulk vessels competing for the carriage of dry bulk preference cargoes, each department or agency having responsibility under the Cargo Preference Act of 1954 (46 U.S.C. 1214(b)), shall evaluate bids received from the operators of such vessels in the manner described in this section.

(b) When a subsidized vessel operator is the apparent low U.S.-flag responsive bidder for a dry bulk preference cargo, the responsible department or agency shall evaluate the subsidized operator's bid by:

(1) Requesting from MARAD an amount for the operating-differential subsidy (ODS) likely to be paid for the carriage of such cargo expressed as a cost per ton for performing the voyage by the apparent low responsive subsidized bidders;

(2) Deriving “augmented bids” for the subsidized operators by adding the ODS amount to each subsidized operator's bid;

(3) Comparing the augmented bids of the subsidized operators and the bids of unsubsidized operators to determine the apparent low responsive bidder;

(4) Requesting from MARAD a fair and reasonable guideline rate for the apparent low responsive bidder which shall be based on MARAD's calculation of anticipated costs (less ODS in the case of a subsidized vessel) for the voyage plus a reasonable amount for profit for the voyage; and

(5) Determining whether the subsidized operator's unaugmented bid or the unsubsidized operator's bid, whichever was determined to be the lowest responsive bid pursuant to paragraph (b)(3) of this section, is at or below the fair and reasonable guideline rate.

(c) If the amount of dry bulk cargo to be shipped is changed at any time prior to award, the department or agency shall request that MARAD provide new ODS amounts applicable to the carriage. The department or agency shall redetermine the augmented bids before determining the lowest responsive bid